

**§ 801.32 Conversion and acquisition.**

A conversion is an acquisition within the meaning of the act.

*Example:* Assume that acquiring person “A” wishes to convert convertible voting securities of issuer X, and is to receive common stock of X valued in excess of \$50 million (as adjusted). If “A” and “X” satisfy the criteria of Section 7A(a)(1) and Section 7A(a)(2)(B)(ii), then “A” and “X” must file notification and observe the waiting period before “A” completes the acquisition of the X common stock, unless exempted by Section 7A(c) or the regulations in this part. Since § 801.30 applies, the waiting period begins upon notification by “A,” and “X” must file notification within 15 days.

[43 FR 33537, July 31, 1978, as amended at 66 FR 8690, Feb. 1, 2001; 70 FR 4992, Jan. 31, 2005]

**§ 801.33 Consummation of an acquisition by acceptance of tendered shares of payment.**

The acceptance for payment of any shares tendered in a tender offer is the consummation of an acquisition of those shares within the meaning of the act.

[48 FR 34433, July 29, 1983]

**§ 801.40 Formation of joint venture or other corporations.**

(a) In the formation of a joint venture or other corporation (other than in connection with a merger or consolidation), even though the persons contributing to the formation of a joint venture or other corporation and the joint venture or other corporation itself may, in the formation transaction, be both acquiring and acquired persons within the meaning of § 801.2, the contributors shall be deemed acquiring persons only, and the joint venture or other corporation shall be deemed the acquired person only.

(b) Unless exempted by the act or any of these rules, upon the formation of a joint venture or other corporation, in a transaction meeting the criteria of Section 7A(a)(1) and 7A(a)(2)(A) (other than in connection with a merger or consolidation), an acquiring person shall be subject to the requirements of the act.

(c) Unless exempted by the act or any of these rules, upon the formation of a joint venture or other corporation, in a transaction meeting the criteria of

Section 7A(a)(1) and the criteria of Section 7A(a)(2)(B)(i) (other than in connection with a merger or consolidation), an acquiring person shall be subject to the requirements of the act if:

(1)(i) The acquiring person has annual net sales or total assets of \$100 million (as adjusted) or more;

(ii) The joint venture or other corporation will have total assets of \$10 million (as adjusted) or more; and

(iii) At least one other acquiring person has annual net sales or total assets of \$10 million (as adjusted) or more; or

(2)(i) The acquiring person has annual net sales or total assets of \$10 million (as adjusted) or more;

(ii) The joint venture or other corporation will have total assets of \$100 million (as adjusted) or more; and

(iii) At least one other acquiring person has annual net sales or total assets of \$10 million (as adjusted) or more.

(d) For purposes of paragraphs (b) and (c) of this section and determining whether any exemptions provided by the act and these rules apply to its formation, the assets of the joint venture or other corporation shall include:

(1) All assets which any person contributing to the formation of the joint venture or other corporation has agreed to transfer or for which agreements have been secured for the joint venture or other corporation to obtain at any time, whether or not such person is subject to the requirements of the act; and

(2) Any amount of credit or any obligations of the joint venture or other corporation which any person contributing to the formation has agreed to extend or guarantee, at any time.

(e) The commerce criterion of Section 7A(a)(1) is satisfied if either the activities of any acquiring person are in or affect commerce, or the person filing notification should reasonably believe that the activities of the joint venture or other corporation will be in or will affect commerce.

*Examples:* 1. Persons “A,” “B,” and “C” agree to create new corporation “N,” a joint venture. “A,” “B,” and “C” will each hold one third of the shares of “N.” “A” has more than \$100 million (as adjusted) in annual net sales. “B” has more than \$10 million (as adjusted) in total assets but less than \$100 million (as adjusted) in annual net sales and total assets. Both “C’s” total assets and its